

1  
2  
3  
4 IN THE UNITED STATES DISTRICT COURT  
5  
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA

7  
8 ORALEE ANDERSON-FRANCOIS,  
9 Plaintiff,

No. C 08-00724 WHA

10 v.

11 COUNTY OF SONOMA, CITY OF SANTA  
12 ROSA, JERRY NEWMAN, BRAD  
13 CONNERS, OFFICER HOOD, JOHN  
14 FELMAN, and DOES 1–25, inclusive,

15 Defendants.  
16 \_\_\_\_\_/

**ORDER DENYING  
MOTIONS FOR  
SUMMARY JUDGMENT**

17 **INTRODUCTION**

18 In this civil-rights action, plaintiff Oralee Anderson-Francois, a foster parent, sues the  
19 County of Sonoma, the City of Santa Rosa and various county and city employees. Plaintiff  
20 contends that her constitutional rights were violated when Santa Rosa police removed two of  
21 her foster children and placed them in county custody following allegations of physical abuse.  
22 The city and county defendants each now move for summary judgment in their favor. Plaintiff,  
23 in turn, moves for summary judgment in her favor against Jerry Newman, a county child  
24 protective services employee, and Detective Brad Connors of the Santa Rosa Police  
25 Department. For the reasons stated below, the city's and county's motions for summary  
26 judgment will be **DENIED**. Plaintiff's motions will also be **DENIED**.

27 **STATEMENT**

28 Plaintiff Oralee Anderson-Francois is repeat foster parent. She was seventy-four years  
old when the events at issue took place. She has adopted eight foster children, was a guardian  
for another child and has provided care and custody to more than 100 additional children  
(according to plaintiff, approximately 300). She also has nine biological children. In 2006,

1 two of her foster children were removed from her care and placed in county custody amid  
2 allegations of physical abuse. Plaintiff now sues the city and county under Section 1983  
3 alleging that the removal violated her constitutional rights. Unless otherwise noted, the  
4 following facts are undisputed.

5 Defendant Jerry Newman was the Sonoma County Child Protective Services  
6 emergency response worker who conducted the investigation. Defendant Brad Connors was  
7 the detective in the Santa Rosa Police Department who (along with one other officer) executed  
8 the removal of the two children. Plaintiff sues the County of Sonoma and Newman,  
9 collectively referred to as “county defendants,” as well as the City of Santa Rosa, Detective  
10 Connors and other police officers, collectively referred to as “city defendants.” She asserts two  
11 claims, both predicated on her Fourteenth Amendment rights: (1) that the initial removal of  
12 the children, which was executed without a warrant on an emergency basis, violated her  
13 procedural due-process rights; and (2) that the continued detention of the children violated her  
14 substantive right of familial of association. This order addresses four motions: the city and  
15 county defendants each move for summary judgment in their favor on all claims, and plaintiff  
16 moves for summary judgment against Newman and Connors.

17 **1. INVESTIGATION OF ALLEGED ABUSE AND REMOVAL OF THE CHILDREN.**

18 On December 16, 2005, two of plaintiff’s adopted children, Marc and Lucas, both  
19 seventeen years old at the time and living elsewhere, went to the Sonoma County Child  
20 Protective Services (“CPS”) office to report child abuse. They reported that plaintiff had  
21 abused them in the past and that, although they no longer lived with plaintiff, they were  
22 concerned for two of their younger (adopted) siblings, Frank and Erica (then thirteen and ten,  
23 respectively). The eventual removal of Frank and Erica from plaintiff’s custody occasioned  
24 this lawsuit.

25 Newman opened an investigation into the allegations after being briefed by the intake  
26 worker. Newman reviewed plaintiff’s file, which contained prior unproven allegations of  
27 abuse. Newman also contacted Lieutenant Fehlman of the SRPD to determine what  
28 information would justify removal. Newman also interviewed plaintiff and several of her

1 children. The children reported whippings with extension cords and belts, beatings with metal  
2 hangers, abuse with scalding water, threats (including with a handgun), and other types of  
3 abuse. During her interview with Newman, plaintiff denied the abuse and told Newman that  
4 the children suffered from various mental or emotional disabilities. She also told Newman that  
5 Marc and Lucas were using drugs, although the boys denied this. Over the course of the  
6 month-and-a-half CPS investigation, Newman also met with the children's doctor, school  
7 administrators and adult siblings, among others. Some described plaintiff as an attentive and  
8 caring mother, but others conveyed or intimated at signs of past physical punishment or abuse.  
9 Newman also learned that the family with whom Marc had been living at the time had kicked  
10 Marc out of the home soon before he reporting his concerns to CPS (Newman Decl. ¶ 6;  
11 Suntag Exh. D at 17; Powell Exh. A).

12 Newman testified at his deposition herein that Frank disclosed the beatings in these  
13 interviews. A few days later, however, Newman re-interviewed Frank and the child recanted,  
14 stating that he did not know what whipping meant. Frank stated that he had lied when he  
15 previously report abuse to Newman (Newman Decl. ¶ 8; Suntag Exh. D at 19–20; Compl. ¶  
16 44).

17 In accordance with interagency guidelines for child-abuse investigations, Newman  
18 undertook to arrange “forensic interviews” — *i.e.*, video-recorded interviews — of Marc and  
19 Lucas. The guidelines required the police to authorize such forensic interviews. Plaintiff  
20 therefore contacted the SRPD, and Detective Conners arranged the interviews. Forensic  
21 interviews of Marc and Lucas (the two 17-year olds) took place February 1, 2006. They were  
22 conducted by a trained interviewer while defendants Newman and Conners watched through a  
23 one-way window. Marc and Lucas again recounted numerous instances of abuse. These  
24 included whippings with extension cords and other previously reported instances of physical  
25 abuse that (they stated) had gone on for years, severe threats including a threat to poison Lucas  
26 and a threat to shoot Marc, and instances where plaintiff withheld meals from the children as  
27 punishment (Newman Decl. ¶¶ 9–14, Exh. 18 at 3, Exh. 110; Suntag Exh. D at 21–25, Exh. B  
28 at 5–9, Exh. 5 at 2–3).

1           **2. STATE PROCEEDINGS.**

2           After the forensic interviews, the decision was made to remove Frank and Erica from  
3 plaintiff's care and, moreover, that the removal should be executed immediately, without  
4 waiting to secure a warrant or a protective-custody order. The parties dispute who was  
5 responsible for the decision.<sup>1</sup> Section 305 of the Welfare and Institutions Code permitted the  
6 police to remove children from their guardians without a warrant under the following  
7 circumstances:

8                   (a) When the officer has reasonable cause for believing that the  
9 minor is a person described in Section 300, and, in addition, that  
10 the minor has an immediate need for medical care, or the minor  
11 is in immediate danger of physical or sexual abuse, or the  
12 physical environment or the fact that the child is left unattended  
13 poses an immediate threat to the child's health or safety.

14           Section 300, in turn, set forth the conditions under which a child fell within the jurisdiction of  
15 the juvenile court for dependency proceedings. It provided (among other such categories) that:

16                   Any child who comes within any of the following descriptions is  
17 within the jurisdiction of the juvenile court which may adjudge  
18 that person to be a dependent child of the court:

19                   (a) The child has suffered, or there is a substantial risk that the  
20 child will suffer, serious physical harm inflicted nonaccidentally  
21 upon the child by the child's parent or guardian . . . .

22                   (b) The child has suffered, or there is a substantial risk that the  
23 child will suffer, serious physical harm or illness, as a result of  
24 the failure or inability of his or her parent or guardian to  
25 adequately supervise or protect the child . . . .

26           On February 1, shortly after the forensic interviews, Detective Connors and another  
27 officer went to plaintiff's house. Neither Newman nor any other county employee  
28 accompanied them. The officers met with plaintiff and, thereafter, removed Frank and Erica  
and took the two children to the county children's center (Suntag Exh. B at 3, 13–14; Newman  
Decl. ¶ 16; Suntag Exh. 5 at 6; Suntag Exh. A at 3–6).

          The county then instituted dependency proceedings in state court. When a minor is  
detained, California law required the county to file a dependency petition within 48 hours if the

---

<sup>1</sup> Defendants contend that, although Newman and Connors discussed the situation and both agreed that removal was appropriate, the decision to remove was Detective Connors' alone. Plaintiff seeks to pin responsibility on both.

1 child is to remain detained. This petition commenced the state dependency proceedings, *i.e.*,  
2 “proceeding[s] in the juvenile court to declare a child to be a dependent child of the court.”  
3 Cal. Welf. & Inst. Code § 325, 332, 355. California law also required that a detention hearing  
4 be held in juvenile court within a day of the petition. Cal. Welf. & Inst. Code §§ 313, 315,  
5 325. The purpose of this hearing was to determine “whether the child should be further  
6 detained” pending the dependency proceedings. *Id.* at § 315.

7 As required, on February 3 the county timely filed a petition to institute dependency  
8 proceedings, and a detention hearing took place Monday, February 6 (the following court day).  
9 Plaintiff was represented by counsel at the detention hearing. After reviewing the evidence,  
10 the court found that the children should remain detained. Its findings included that plaintiff  
11 had “physically abused minors with excessive corporal punishment,” that there was substantial  
12 danger to the children’s physical health, and that remaining in plaintiff’s care would be  
13 contrary the children’s welfare (Harvey Decl. ¶ 2; Harvey Exh. 100, 101).

14 The dependency proceedings thereafter occurred in two phases: an initial  
15 “jurisdictional trial” and a subsequent “dispositional hearing.” The jurisdictional trial resulted  
16 in an order as to whether the child fell within the jurisdiction of the juvenile court — *i.e.*, “is a  
17 person described by Section 300” (quoted above) — whereas the dispositional hearing  
18 determined the “proper disposition to be made of the child” and constituted the appealable  
19 judgment. Cal. Welf. & Inst. Code §§ 356, 358, 360.

20 The outcomes of both the jurisdictional and dispositional proceedings were adverse to  
21 plaintiff. The eight-day jurisdictional trial began in May 2006. In a June 17 order, the court  
22 found jurisdiction over the children under both Section 300(a) and (b).<sup>2</sup> The dispositional  
23 hearing took place August 21, 2006, and resulted in a dispositional order that the children  
24 remain in county custody.

---

25  
26  
27 <sup>2</sup> These provisions required that each child “ha[d] suffered, or there [was] a substantial risk that the child [would]  
28 suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent or guardian . . .” and that each  
“ha[d] suffered, or there [was] a substantial risk that the child [would] suffer, serious physical harm or illness, as a result of  
the failure or inability of his or her parent or guardian to adequately supervise or protect the child . . .” Cal. Welf. & Inst.  
Code § 300(a), (b).

1 Reunification services followed. After approximately a year of such services,  
2 reunification reviews took place in May 2007. The juvenile court denied reunification on the  
3 grounds that returning the children to plaintiff's custody would create a substantial risk of  
4 harm to them. The court then terminated further reunification services.

5 Plaintiff filed two state appeals. Her first appeal sought review of the juvenile court's  
6 mid-2006 jurisdictional and dispositional orders as well as the February 2006 detention order.  
7 In a March 2008 order, the court of appeals affirmed the juvenile court. Plaintiff petitioned the  
8 California Supreme Court for review of that decision, and in September 2008 the Supreme  
9 Court denied the petition. Plaintiff also appealed the juvenile court's 2007 ruling denying  
10 reunification. In a June 2008 order, the court of appeal again affirmed the juvenile court's  
11 ruling (Harvey Exhs. 105, 107).

12 Plaintiff filed this action in January 2008. As stated, she sues the County of Sonoma,  
13 county child protective services worker Newman, the City of Santa Rosa, Detective Connors  
14 and other police officers. Claim One asserts that the initial removal of the children without a  
15 warrant violated her procedural due-process rights. Claim Two asserts that the continued  
16 detention of the children violated her right of familial of association. In her briefing, plaintiff  
17 clarifies that Claim Two alleges a violation *only* for the detention of the children prior to the  
18 first juvenile court proceeding — *i.e.*, for the five days from the February 1 emergency  
19 removal to the February 6 detention hearing (Opp. at 2). The city and county defendants each  
20 now move for summary judgment in their favor, and plaintiff moves for summary judgment  
21 against Newman and Detective Connors, respectively.

## 22 ANALYSIS

23 Summary judgment is granted under FRCP 56 when “the pleadings, depositions,  
24 answers to interrogatories, and admissions on file, together with the affidavits, if any, show  
25 that there is no genuine issue as to any material fact and that the moving party is entitled to a  
26 judgment as a matter of law.” A district court must determine, viewing the evidence in the  
27 light most favorable to the nonmoving party, whether there is any genuine issue of material  
28 fact. *Giles v. General Motors Acceptance Corp.*, 494 F.3d 865, 873 (9th Cir. 2007). A

genuine issue of fact is one that could reasonably be resolved, based on the factual record, in favor of either party. A dispute is “material” only if it could affect the outcome of the suit under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–49 (1986).

#### 1. PRECLUSION AND THE ROOKER-FELDMAN DOCTRINE.

Defendants first argue that preclusion or the *Rooker-Feldman* doctrine bar plaintiff’s Section 1983 claims. Under the doctrine of collateral estoppel, “once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case.” *Hydranautics v. FilmTec Corp.*, 204 F.3d 880, 885 (9th Cir. 2000). In the Ninth Circuit, state law is applied to determine whether a prior state court judgment will be given preclusive effect in federal court.<sup>3</sup> The elements of collateral estoppel in California are as follows:

(1) the issue necessarily decided at the previous proceeding is identical to the one which is sought to be relitigated;

(2) the first proceeding ended with a final judgment on the merits; and

(3) the party against whom collateral estoppel is asserted was a party or in privity with a party at the first proceeding.

*Ibid.*

The *Rooker-Feldman* doctrine is a well-established jurisdictional rule prohibiting federal courts from exercising appellate review over final state court judgments. It applies when a plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and it also “prohibits a federal district court from exercising subject matter jurisdiction over a suit that is a de facto appeal from a state court judgment.” *Reusser v. Wachovia Bank*, 525 F.3d 855, 858–89 (9th Cir. 2008).

Both the preclusion and *Rooker-Feldman* arguments hinge in large part on whether the juvenile court’s findings from the February 6 detention hearing constituted state-court review of the initial *warrantless removal* of the two children (in which case the matter was decided by the state court and plaintiff received adequate due process), or whether the February 6 hearing

<sup>3</sup> See, e.g., *Khanna v. State Bar of Cal.*, 505 F. Supp. 2d 633, 647 (N.D. Cal. 2007).

1 instead addressed only the need for *continued detention* of the children going forward (in  
2 which case the state court did not decide the propriety of the warrantless removal).<sup>4</sup>

3 As explained, California law required an expedited detention hearing when children are  
4 removed from their parents on an emergency basis without a warrant. No decision has been  
5 cited nor found squarely addressing whether the detention hearing passed judgment on the  
6 propriety of the initial warrantless removal.

7 Section 315 of the Welfare and Institutions Code, which mandated the detention,  
8 described its purpose in a forward-looking manner: “to determine whether the minor shall be  
9 *further* detained.” Section 319(e), which also detailed the requirements for detention hearing,  
10 however, required the state court (among several other requirements) to “*specify why the initial*  
11 *removal was necessary*” if the court ordered the children detained. But this is not quite the  
12 same test as demanded by the Ninth Circuit, which is whether, at the time of the seizure,  
13 defendants had “reasonable cause to believe that the child [was] in imminent danger of serious  
14 bodily injury.”

15 In order to invoke issue preclusion, it must be shown that the party to be precluded had  
16 fair notice and a fair opportunity to litigate the issue. This record does not reveal the extent to  
17 which plaintiff was put on notice that the warrantless aspect of the past conduct was to be  
18 adjudicated at the hearing, *i.e.*, that the issue of whether there had been time to obtain a warrant  
19 was in play at the Section 319 hearing. Section 319, by its terms, does not expressly require  
20 that issue to be addressed. The closest it comes is in requiring the judge to “specify why the  
21 initial removal was necessary” but this is not the same as “why the initial removal *without a*  
22 *warrant* was necessary,” the italicized point not needing to be resolved. Moreover, since the  
23 entire proceeding is vastly expedited, there is no way plaintiff could have timely conducted the  
24 discovery and investigation to show that officers had information on a timeline that would  
25 have allowed for a short delay needed to obtain a warrant.

---

26  
27 <sup>4</sup> Although Claim Two of plaintiff’s complaint could be read to challenge the “continued detention” of plaintiff’s  
28 two children during the entire dependency proceedings, in her briefing plaintiff clarified that she only challenges the initial  
warrantless removal of the two children and their detention prior to any involvement by the juvenile court whatsoever (*i.e.*,  
between the February 1 removal and the February 6 detention hearing).

1 As plaintiff emphasized at the hearing, the Ninth Circuit has arguably indicated that  
2 initial Section 319 detention findings do *not* bar subsequent federal damages actions  
3 complaining of the initial warrantless removal. In *Mabe v. San Bernardino County*, much like  
4 here, the plaintiff's children were removed without a warrant. An initial hearing was held the  
5 following day at which further detention was ordered. Thereafter, reunification services as  
6 well as the jurisdictional and dispositional phases of the dependency proceedings took place.  
7 The Ninth Circuit stated (albeit in a decision that did *not* address preclusion or a *Rooker-*  
8 *Feldman* argument) that "[t]he juvenile court's findings are not relevant to whether a sufficient  
9 exigency existed at the time of the removal to justify the warrantless action because such an  
10 inquiry is to be based on the information that Perry had at the time." 237 F.3d 1101, 1110 (9th  
11 Cir. 2001). The decision is unclear as to which "findings" it found irrelevant (the detention-  
12 hearing findings or the subsequent reunification, jurisdictional and dispositional findings) but  
13 the decision arguably supports plaintiff's position.

14 In any event, no decision has been cited nor found in which a Section 319 detention  
15 hearing or finding barred a subsequent federal claim regarding a warrantless removal. Because  
16 the juvenile court did not clearly rule on the pre-hearing exigency issue, even after the fact,  
17 *i.e.*, the propriety of the initial *warrantless* removal, and because no decision has ever found  
18 such a detention hearing to bar federal claims in these circumstances, this order finds that  
19 plaintiff's claims are not barred by collateral estoppel or the *Rooker-Feldman* doctrine.

## 20 2. FOURTEENTH AMENDMENT AND IMMUNITY.

21 Plaintiff's two claims are both predicated on Fourteenth Amendment rights. Parents  
22 and children have a well-elaborated constitutional right to live together without governmental  
23 interference. The Fourteenth Amendment guarantees that parents will not be separated from  
24 their children without due process of law except in emergencies. Officials violate this right if  
25 they remove a child from the home absent "information at the time of the seizure that  
26 establishes 'reasonable cause to believe that the child is in imminent danger of serious bodily  
27 injury and that the scope of the intrusion is reasonably necessary to avert that specific injury.'"  
28

1 *Rogers v. County of San Joaquin*, 487 F.3d 1288, 1294 (9th Cir. 2007).<sup>5</sup> “Serious allegations  
2 of abuse that have been investigated and corroborated usually give rise to a ‘reasonable  
3 inference of imminent danger sufficient to justify taking children into temporary custody’ if  
4 they might again be beaten or molested during the time it would take to get a warrant. *Id.* at  
5 1294–95.

6 The basic question is whether defendants had sufficient evidence of “imminent danger  
7 of serious bodily injury” when they removed the children in question from plaintiff’s home  
8 without a warrant. Given that at least some defendants had known of the abuse allegations for  
9 months, it cannot be said as a matter of law on the present record that there was sufficient  
10 evidence to justify a warrantless search. At the same time, it cannot be said that there was not.  
11 The matter will have to be tried.

12 Plaintiff contends that the length of the investigation (approximately six weeks)  
13 indicates that there could not have been a true emergency. She points out that there had been  
14 no confirmed instances of abuse for weeks or months prior to the warrantless removal. She  
15 also emphasizes that Newman encountered some evidence tending to suggest that plaintiff was  
16 a caring or attentive mother, and she challenges the credibility of Marc and Lucas’ abuse  
17 allegations. Defendants, for their part, emphasize that, based on their investigation, they  
18 believed physical abuse could recur at any time and that, after the forensic interviews, “serious  
19 allegations” of abuse had been investigated and corroborated. All of these, however, are  
20 factual issues inappropriate for adjudication on summary judgment. *Rogers*, 487 F.3d at  
21 1294–98.

22 Defendants next contend that they are entitled to qualified immunity. A claim of  
23 qualified immunity requires a two-part inquiry: “(1) Was the law governing the official's  
24 conduct clearly established? (2) Under that law, could a reasonable [official] have believed the  
25 conduct was lawful?” *Rogers*, 487 F.3d at 1296–97. It is undisputed that, at the time the  
26 events at issue took place, the Fourteenth Amendment prohibited government officials from  
27

---

28 <sup>5</sup> Unless otherwise noted, all internal quotations and citations are omitted from authority cited by this order.

1 removing a child from his or her parents absent evidence of “imminent danger of serious  
2 bodily injury,” and that the right was well-established. *See id.* at 1294–97.

3 A reasonable officer would have understood that the law required a warrant under the  
4 circumstances presented by the current record. The investigation had taken nearly six weeks.  
5 The most recent alleged instances of abuse had taken place weeks if not months prior to the  
6 removal. There was no specific evidence indicating that the children were in *imminent* danger  
7 of abuse — only the mere possibility that, because plaintiff (allegedly) had abused her children  
8 in the past, she might do so again. No known danger required defendants to forego the few  
9 hours it would have taken to secure a warrant in order to prevent further abuse. This order  
10 therefore rejects the immunity defense.<sup>6</sup>

11 Finally, defendant Newman contends that he cannot be held liable for Claim One (the  
12 procedural due process claim for warrantless removal) because he did not personally  
13 participate in the removal of the two children. It is uncontested that Newman did not  
14 accompany Detective Conners to plaintiff’s house and physically remove the children.  
15 Nevertheless, this order declines to hold, as a matter of law, that a county employee can be  
16 liable for a warrantless child removal only if he or she *physically* participated in the removal.  
17 Newman conducted the investigation into the abuse allegations. He contacted the police to  
18 initiate the forensic interviews. He provided input and recommendations to Detective Conners  
19 in support of emergency removal. The decision to remove the children was based in large part  
20 on his investigation and input — at least, the current record viewed in the light most favorable  
21 to plaintiff could so indicate. Plaintiff has established a triable of fact regarding whether  
22 Newman “integrally participated” in the alleged violation. *Boyd v. Benton County*, 374 F.3d  
23 773, 780 (9th Cir. 2004).

### 24 3. MONELL CLAIMS.

25 Plaintiff also sues the city and county. Section 1983 liability may be imposed on a  
26 municipality only where a municipal policy or custom is shown to have caused the violation.

---

27  
28 <sup>6</sup> The county defendants also raise an absolute immunity defense, arguing that the state court has specifically authorized the detention. This order need not address the claim because, as explained, plaintiff has clarified in her briefing that she complains only of events that took place prior to any state court involvement.

1 *Monell v. Department of Social Services of City of New York*, 436 U.S. 658 (1978). Plaintiff  
2 must show that policy or practice amounted to “deliberate indifference” to her constitutional  
3 rights and was the “moving force” behind the violation. *Anderson v. Warner*, 451 F.3d 1063,  
4 1070 (9th Cir. 2006).

5 The city moves for summary judgment of the *Monell* claim on the grounds that plaintiff  
6 failed to establish any predicate violation. This order has found a triable issue of fact regarding  
7 whether city officials, acting under the color of state law, violated plaintiff’s constitutional  
8 rights. The city’s motion for summary judgment of the *Monell* claim is therefore denied.

9 The county’s motion is also denied. The record, viewed in the light most favorable to  
10 plaintiff, suggests that the county had virtually no training regarding the warrant requirement  
11 and what constituted “exigency” to guide its employees as they undertook sensitive decision of  
12 whether or not to remove children from their parents. It also indicates that the warrants were  
13 rarely obtained before children were removed from their parents (Powell Exh. A at 55–57;  
14 Powell Opp. Exh. D at 25, Exh. E at 16, 21). Such circumstances, if proven to be true, could  
15 support a finding that the county was deliberately indifferent to plaintiff’s Fourteenth  
16 Amendment rights and that its failure to train its employees was the moving force behind the  
17 alleged violations. Plaintiff has identified a triable issue of fact on her *Monell* claims.

#### 18 CONCLUSION

19 For all of the above-stated reasons, the city and county’s motions for summary  
20 judgment are **DENIED**. Plaintiff’s motions for summary judgment are also **DENIED**.

21  
22  
23 Dated: May 22, 2009.

  
\_\_\_\_\_  
24 WILLIAM ALSUP  
25 UNITED STATES DISTRICT JUDGE  
26  
27  
28